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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,246	04/23/2004	Mark C. Boomer	101896-0242 (DEP5294)	3245
21125 7590 12/26/2008 NUTTER MCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			EXAMINER HOFFMAN, MARY C	
			ART UNIT 3733	PAPER NUMBER
			NOTIFICATION DATE 12/26/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@nutter.com

Office Action Summary

Application No.

10/709,246

Applicant(s)

BOOMER ET AL.

Examiner

MARY HOFFMAN

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-25 is/are pending in the application.
- 4a) Of the above claim(s) 7-10, 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 11-19 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-6, 11-19 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus et al. (U.S. Patent No. 5,746,741) in view of Walulik (U.S. Patent No. 6,277,119) in view of.

Kraus et al. disclose an implantable spinal connector comprising a clamp member (FIG. 5c) having top and bottom portions that are connected to one another at a terminal end thereof such that the top and bottom portions are movable between an open position in which the top and bottom portions are spaced a distance apart from one another, and a closed position in which the clamp member is adapted to engage a spinal fixation element there between, and the clamp member further including a bore extending through the top and bottom portions for receiving a locking mechanism for locking the top and bottom portions in the closed position. The superior and inferior surfaces of the top and bottom portions tapering away from each other toward the terminal end. The implantable spinal connector further comprising a recess formed between the top and bottom portions for seating a spinal fixation element. The recess is formed adjacent to said terminal end for seating a spinal fixation element therein. The recess is formed in at least one of the inferior surface of the top portion and the superior

surface of the bottom portion. The recess is formed in each of the inferior surface of the top portion and the superior surface of the bottom portion of the clamp member. The recess has a concave shape defines a substantially cylindrical recess when the clamp member is in the closed position. The top and bottom portions are biased to an closed position. The clamp member is formed from a material that allows the clamp member to deform around a spinal fixation element disposed between the top and bottom portions when the clamp member is locked in the closed position.

Kraus et al. disclose the claimed invention except for the locking mechanism, i.e. the bore in at least one of the top and bottom portions being internally threaded for mating with corresponding threads formed on at least a portion of the locking mechanism, the locking mechanism comprising a fastening element having a head and a shaft, and wherein one of the bore formed in the top portion and the bore formed in the bottom portion of the clamp member is adapted to freely rotatably receive the threaded shaft of the fastening element, and the other one of the bore formed in the top portion and the bore formed in the bottom portion is internally threaded to mate to threads formed on at least a portion of the shaft of the fastening element, the fastening element including a flange formed there around and adapted to at least temporarily mate the fastening element to a spinal anchoring device, the bore in the top portion of the clamp member being internally threaded for mating with corresponding threads formed on at least a portion of the shaft, and the fastening element including a mating element/socket formed on a distal-most end thereof for mating with a driver tool.

Walulik discloses a spinal connector including a locking mechanism comprising a bore in at least one of the top and bottom portions being internally threaded for mating with corresponding threads formed on at least a portion of the locking mechanism, the locking mechanism comprising a fastening element having a head and a shaft, and wherein one of the bore formed in the top portion and the bore formed in the bottom portion of the clamp member is adapted to freely rotatably receive the threaded shaft of the fastening element, and the other one of the bore formed in the top portion and the bore formed in the bottom portion is internally threaded to mate to threads formed on at least a portion of the shaft of the fastening element, the fastening element including a flange formed there around and adapted to at least temporarily mate the fastening element to a spinal anchoring device, the bore in the top portion of the clamp member being internally threaded for mating with corresponding threads formed on at least a portion of the shaft, and the fastening element including a mating element/socket formed on a distal-most end thereof for mating with a driver tool (see FIG. 5c) in order to provide a more secure connection between the two clamping jaws.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the device of Kraus et al. with a locking mechanism in view of Walulik in order to provide a more secure connection between the two clamping jaws.

Furthermore, regarding claims 17 and 25, it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the threads formed on at least a portion of the shaft of Kraus et al. in view of Walulik

being left-handed threads, since it is a configuration a person ordinary skill in the art would find obvious for the purpose of providing threads. *In re Dailey and Eilers*, 149 USPQ 47 (1966).

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY HOFFMAN whose telephone number is (571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733